

SIKKIM

GOVERNMENT



GAZETTE

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**GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK**

No. 11/LD/P/2010

Date: 17.7.2010

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on the 29th day of June, 2010 is hereby published for general information:-

THE SIKKIM VALUE ADDED TAX (AMENDMENT) ACT, 2010

ACT NO. 11 OF 2010

AN

ACT

further to amend the Sikkim Value Added Tax Act, 2005,

Be it enacted by the Legislature of Sikkim in the Sixtieth Year of the Republic of India as follows:-

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| Short title, 1.
extent and
commencement | (1) This Act may be called the Sikkim Value Added Tax (Amendment) Act, 2010.
(2) It extends to whole of Sikkim.
(3) Unless otherwise specifically provided, it shall come into force at once. |
| Substitution of 2.
new clause for
clause (xxviii) of
section 2 | In the Sikkim Value Added Tax Act, 2005, (hereinafter referred to as the said Act), for clause (xxviii) of section 2, the following clause shall be substituted, namely:-
“(xxviii) “Sale” with all its grammatical variations and cognate expressions, means every transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes:-
(a) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;
(b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
(c) a delivery of goods on hire purchase or any other system of payment in installment;
(d) a transfer of the right to use any goods for any purpose, whether or not for a specified period, for cash deferred payment or any other valuable consideration; |

- (e) a supply by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;
- (f) a transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge:

**Amendment of
clause (xxix) of
section 2**

3. Provided that these provisions shall be deemed to have come into force on the first day of April, 2005.”
In the said Act, in clause (xxix) of section 2, the following proviso shall be inserted, namely:-

“Provided that the State Government may, if satisfied to do so in public interest, from time to time, by notification exclude any levies under any other Act for the time being in force, from being part of the sale price for levy of tax under this Act.”

**Amendment of
section 4**

4. In the said Act, in section 4,-
- (1) for sub-section (2), the following sub-section shall be substituted, namely:-
“(2) The Government may appoint either the Commissioner of Commercial Taxes as the Appellate Authority or a person who is or has been an officer not below the rank of the Secretary to Government of Sikkim and has served for a minimum period of two years in the department of Commercial Taxes.”
 - (2) after sub-section (6), the following sub-section shall be inserted, namely:-
“(7)(a) Notwithstanding anything contrary to the provisions laid down in sub-section (1) and sub-section (2) above, and subject to clause (b) to this sub-section, the Commissioner may allow any of the prescribed authority who is sub-ordinate to him, to perform the responsibilities of an Appellate Authority in certain cases, and such authority shall be deemed to be an Appellate Authority appointed under the Act.
 - (b) The responsibilities referred to in clause (a) shall not be conferred to a prescribed authority below the rank of Joint Commissioner in the cases where original order is passed by either Deputy Commissioner or Assistant Commissioner, and to a prescribed authority not below the rank of Additional Commissioner or Special Commissioner where the original order is passed by Joint Commissioner and equivalent.
 - (c) The powers, functions and procedures prescribed for the Appellate Authority shall mutatis mutandis, apply in dealing with the appeal preferred with the authorities referred to in clauses (a) and (b) above.”

**Amendment of
section 10**

5. In the said Act, for the existing section 10 and the entries relating thereto, the following shall be substituted, namely:-
“10. Levy of tax on purchases-
Every registered dealer who is in the course of business purchases from an unregistered dealer any goods-

- (1) specified in Schedule II, III, IV and V to this Act, he shall be liable to pay tax on the purchase of such goods, if the goods are:-
 - (a) used in the process of producing exempted goods,
 - (b) used in the process of producing taxable goods and such goods are disposed off otherwise than by sale,
 - (c) disposed off otherwise than by sale.
- (2) specified in Schedule I to this Act, he shall be liable to pay tax on the purchase of such goods, if the goods are used in the process of producing taxable goods and the goods so produced are disposed off otherwise than by sale:

Provided that such tax on purchases shall be levied at the same rate at which such tax under section 9 or 12 would have been levied on the sale of such goods within the State on the date of such purchase."

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| Amendment of sub-section (5) of section 13 | 6. | In the said Act, in sub-section (5) of section 13, for the words "not exceeding eight percent", the words "at such percentum" shall be substituted. |
| Substitution of clause (c) of sub-section (2) of section 16 | 7. | In the said Act, for clause (c) of sub-section (2) of section 16, the following clause shall be substituted, namely:- "c) issue tax invoices of the sales made in the form and manner specified in section 55." |
| Omission of sub-section (2) of section 17 | 8. | In the said Act, sub-section (2) of section 17 shall be omitted. |
| Amendment of section 18 | 9. | <p>In the said Act, in sub-section (2) of section 18, for the words "not exceeding five hundred rupees per day of default" appearing after the words "a penalty" and before the words "after affording", the following words shall be substituted, namely:-</p> <p>""equivalent to two percent of the gross value of the work awarded":</p> <p>Provided that this provision shall be deemed to have come into force on the first day of April, 2005."</p> |
| Amendment of section 19 | 10. | <p>In the said Act, in sub-section (5) of section 19, the following Proviso shall be inserted, namely:-</p> <p>"Provided that in such cases where the deducting authority remits to the credit of the State Government the amount deducted at source by cheque or demand draft or any other similar instruments, such deducting authority may make the remittance within a period of one month from the date of the deductions made."</p> |
| Amendment of section 21 | 11. | <p>In the said Act, in section 21, in clause (e) of sub-section (1),-</p> <ol style="list-style-type: none"> (i) for the figure and word "4 percentum" wherever they occur, the figure and word "2 percentum" shall be substituted, and (ii) After the first Proviso, the following Proviso shall be inserted, namely,- "Provided further that the State Government may, by notification, revise the rate prescribed in this clause as and when required due to change of provisions of any other law for the time being in force." |
| Amendment of section 24 | 12. | <p>In the said Act, for the existing section 24 and the entries relating thereto, the following shall be substituted, namely:-</p> <p>"24. Power of the State Government to amend Schedule -</p> |

The State Government may, by notification, add to, amend or alter any of the items and the rates of tax in the Schedule to this Act."

Amendment of section 25

13.

In the said Act, in section 25, in sub-section (3), the following Provisos shall be inserted, namely:-

"Provided that the dealer shall furnish prior information with details, to the prescribed authority, of the goods being returned or disposed of otherwise than by sale for reasons of rejection or for any other reasons:

Provided further that duly providing an opportunity of being heard, the prescribed authority shall impose on the dealer a penalty of a sum not exceeding fifty percentum of the value of the goods claimed as returned or rejected or disposed of otherwise than sales, for failure to furnish prior information as required by first Proviso to this sub-section."

Amendment of section 29

14.

In the said Act, in section 29,-

- (1) in sub-section (1), for the words "less than five thousand rupees and not exceeding ten thousand rupees for each month of default" the words, "exceeding five hundred rupees per day of default." shall be substituted;
- (2) in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that if the dealer fails to pay the penalty within the time prescribed in sub-section (2) or first Proviso thereof, the prescribed authority may, after providing an opportunity of being heard, pass an order to close down the business of the defaulter till the penalty is paid, and the licensing authority empowered under any other law for the time being in force, if any, shall suspend the trade license till the order remains in force."

Insertion of new section 29A

15.

In the said Act, after section 29, the following new section shall be inserted, namely:-

"29A. Exemption from registration to certain class of contractor involved in execution of works contract-

- (1) Notwithstanding anything contained in section 26 and other provisions laid down in this Chapter or anything contrary to this Act, a contractor involved in execution of works contract the gross contractual value of which does not exceed such amount as may be specified by the Government by notification, shall not be required to register himself and file the returns under the Act :

Provided that any contractor intending to opt for registration shall not be barred to register himself under the Act.

- (2) Any contractor exempted under sub-section (1) shall not be entitled to import goods from outside the State of Sikkim, whether such goods are purchased or otherwise, for use in the works contract :

Provided that a total tax liable to be paid on the value of the goods and a penalty not exceeding equivalent to double the tax but not less than one half of such tax shall be imposed against breach of the provision of this sub-section.

- (3) The State Government may from time to time, by notification, prescribe the rate of tax payable by such class of contractors who are exempted from registration under sub-section (1), and the deducting or paying authority shall deduct such tax at source from the bills payable to such contractors.

- (4) No person or any authority shall award works contract to any contractor exempted from registration under this section unless no objection certificate is produced, before such person or authority, issued by the concerned prescribed authority on production of proof of payments of tax and necessary verifications as to the works contract executed previously, if any."

**Amendment of 16.
section 30**

- In the said Act, in section 30,-
- (a) in sub-section (4),- after the words and figures "by section 16" and before the words "to pay tax", the words and figures "or section 17"; shall be inserted;
- (b) in sub-section (9),-
- (i) in clause (a),- for the words "according to the return on or before the end" , the words, "for each month on or before the fifteenth day" shall be substituted ;
- (ii) in clause (b),- for the words "quarterly turnover, on or before the end of the month following the quarter to which it relates", the words, "monthly turnover, on or before the fifteenth day of the following month" shall be substituted.

**Amendment of 17.
sub-section (1) of
section 38 and
insertion of new
sub-section (4A)**

- In the said Act, in section 38,-
- (i) in sub-section (1), after the words and the punctuation mark "correct and complete," and before the words "the prescribed authority", the following words and punctuation mark shall be inserted, namely:-
"or if no tax is paid or if the tax is not fully paid in respect of any period,";
- (ii) after sub-section (4), the following sub-section shall be inserted, namely:-
- "(4A). If any assessing authority discovers in the returns or books of accounts or any statement of business of any dealer that in such returns or books of accounts or statement non-taxable component is included, which is not shown separately for being unascertainable in nature, the assessing authority may, after verification and assigning the reason thereof in writing, determine the taxable turnover component as he justifies as reasonable, for the purpose of levy of tax."

**Amendment of 18.
section 39**

In the said Act, in sub-section (3) of section 39, the following Proviso shall be inserted, namely:-

"Provided that for just and sufficient reasons to be recorded in writing, the Commissioner may order for detailed audit of any dealer or dealers after a period of twenty four months, but not later than six years in any case, from the due date referred to above".

**Amendment of 19.
sub-section (2) of
section 40**

- In the said Act, in sub-section (2) of section 40,-
- (1) for the words "a sum of one hundred rupees" the words, "a sum not exceeding five hundred rupees" shall be substituted;
- (2) the words "or an amount equal to the tax assessed, whichever is greater", and the first Proviso and the second Proviso thereunder shall be omitted.

**Amendment of 20.
section 41**

- In the said Act, in section 41,-
- (i) in clause (i), after the words "the returns", the words "or the abstract statements, as the case may be," shall be inserted ;
- (ii) in clause (ii), for the word and figures "section 39", the word and figures "section 38" shall be substituted ;

- (iii) after clause (ii), the following clause shall be inserted, namely:-
- “(iii) if the dealer fails to pay the assessed tax or penalty or both within the time prescribed under clause (ii), the prescribed authority may, after providing an opportunity of being heard, pass an order to close down the business of the defaulter till the due tax or penalty or both is paid, and the licensing authority under any other law for the time being in force, if any, shall suspend the trade license till the order remains in force.”

**Amendment of 21.
section 42**

In the said Act, in section 42,-

- (i) sub-section (1) shall be omitted ;
- (ii) in sub-section (2),-
- (a) for the word and figures “section 39” the words and figures “section 38 and section 40”, shall be substituted ;
- (b) in clause (a) and clause (b), after the words “assessment is made”, the words “or was to have been made” shall be inserted ;
- (iii) sub-section (3) shall be omitted.

**Insertion of 22.
new section
42A**

In the said Act, after section 42, the following new section shall be inserted, namely,-

“42A. Reassessment-

- (1) Any assessment made on any dealer may be reopened for reassessment by the same prescribed or the assessing authority who made the assessment or by such higher authority next to the authority who made the assessment:
Provided that no reassessment shall be made unless new and reliable fact or facts are discovered subsequent to the assessment that was made, which shall be recorded in writing by the authority making reassessment, and a notice to that effect is given to the assessee.
- (2) A prior permission in writing of the Commissioner or the authority authorized by him shall be obtained by the assessing authority before initiating the proceedings of reassessment.
- (3) No reassessment shall be made after three years from the date of passing of the order of the assessment.”

**Amendment of 23.
sub-section (3)
of section 43**

In the said Act, in sub-section (3) of section 43, the figure “39” shall be omitted.

**Insertion of 24.
new section
53A**

In the said Act, after section 53, the following new section shall be inserted, namely,-

“53A. Bar on issue of prescribed declaration Forms or suspension of such Forms-

If any dealer or person fails, after expiry of a due date of a notice for payment of tax or interest or penalty required to be paid under this Chapter or the Act, the issue of prescribed Forms of declaration of purchases or waybills, whether inter-state or intra-state, shall be withheld, or import of goods, even if declared in the prescribed Forms, shall be suspended until payment is made of due tax or interest or penalty, as the case may be.”

**Amendment of 25.
section 54**

In the said Act, in section 54,-

- (i) in sub-section (1), after the words “to furnish return” and before the words and figures “under section 30”, the words “ or quarterly abstract statement”, shall be inserted ;
- (ii) in sub-section (3), the following words and punctuation marks shall be omitted, namely:-

- “ , without prejudice to the provisions of sub-section (5),”
- (iii) in sub-section (4), after the words “verify the returns” and before the words “referred to”, the words “ or quarterly abstract statement”, shall be inserted ;
 - (iv) existing sub-section (5) shall be omitted ;
 - (v) after sub-section (5) as so omitted, the following sub-section shall be inserted, namely,-
“(5) The accounts, records, registers, statements, and/or documents referred to in this section or elsewhere in the Act, shall be, subject to section 42, maintained for a period of six years.”
- Amendment of 26.
section 55**
- In the said Act, in section 55,-
- (a) clause (a) of sub-section (2) shall be omitted;
 - (b) in sub-section (9), for the words “five years”, the words “six years”, shall be substituted ;
 - (c) after sub-section (10), the following new sub-section shall be inserted, namely,-
“(11) If a dealer or person required under this section to provide or issue tax invoice or retail invoice, as the case may be, is found not complying with the provisions of this section, the prescribed authority shall impose upon him a penalty of a sum not exceeding fifty percentum of the value of the goods sold without providing or issuing tax invoice or retail invoice, to the purchasers.”
- Amendment of 27.
section 56**
- In the said Act, in section 56,-
- (i) before the opening words “Every dealer”, the words “Subject to the provisions of section 42” shall be inserted ;
 - (ii) for the words “five years” the words, “six years” shall be substituted.
- Insertion of 28.
new section 59A**
- In the said Act, after section 59, the following new section shall be inserted, namely:-
- “59A. Penalty for non-maintenance of accounts, records or documents-**
Any dealer or person whoever fails to maintain the accounts or records or documents required under this Chapter or under the Act, and in cases where a penalty for default is not prescribed specifically in the relevant section, shall be liable for a penalty of a sum not exceeding rupees ten thousand in every instance:
Provided that an opportunity of being heard shall be provided to the defaulting dealer or person before imposing the penalty.”
- Amendment of 29.
section 60A**
- In the said Act, in section 60A, the following Proviso shall be inserted, namely:-
- “Provided that any transporter, carrier of goods or transporting agent carrying on business without valid certificate of enrolment shall be liable for penalty not exceeding five thousand rupees that shall be imposed after providing an opportunity of being heard, and when the offence is a continuing one, with a daily fine of rupees fifty during the continuance of the offence.”
- Insertion of 30.
new section 64A**
- In the said Act, after section 64, the following new section shall be inserted, namely:-

“64A. Survey and verification-

- (1) For the purpose of identifying dealers who are liable to pay tax at the rates specified in the Schedule to the Act or compounded tax under the Act or the tax under section 26A, but have registered as composite dealers or remained unregistered, or for verification of documents in the business premises, of any kind required to be maintained by the dealers under the Act or stock of goods for sales kept in a store or godown or warehouse, whether declared or not, the Commissioner shall from time to time cause to be undertaken or any authorized prescribed authority may undertake a survey of such composite dealers or unregistered dealers, or he shall cause to be conducted or any authorized prescribed authority may conduct an inquiry, as the case may be.
- (2) The Commissioner or the authorized prescribed authority may, by notice require any information or particulars from any person or dealer or class of dealers or transporter or providers of public utilities and financial institution including banking companies which he is of the opinion will be relevant and useful for the purpose of survey or verification.
- (3) For the purpose of survey or verification, the Commissioner or any authorized prescribed authority enter any place of business of the persons or dealers referred to in sub-section (1) during the hours at which the business is open or in case of any other place, only after sunrise and before sunset:

Provided that any person, proprietor or employee attending or helping in the business shall,-

- (a) provide all necessary facility to inspect such books of accounts or other documents as the Commissioner or the authorized authority may require,
- (b) afford necessary facility to check or verify the cash, stock or other valuable article or things which may be found therein, and
- (c) furnish such information as may be required as to any matter which may be useful for or relevant, to any proceedings under this Act.
- (4) The Commissioner or any authorized prescribed authority may seize any accounts or documents from the dealer or class of dealers or any person referred to in sub-section (1) or in Proviso to sub-section (3), and the provisions of section 63 shall mutatis mutandis apply for making the seizures.
- (5) Any dealer or class of dealers or any person not providing information or facilities required under this section without any valid and reasonable cause, shall amount to obstruction in discharge of the lawful authority and liable for action under any other law for the time being in force.”

**Amendment of 31.
section 65**

In the said Act, in section 65,-
in sub-section (2),-

- (i) in clause (a), after the words “signed by the consignor” and before the words “of goods carried.”, the words “or the consignee, as the case may be,” shall be inserted ;
- (ii) in clause (b), after the words “any other place” and before the words “by an officer”, for the words “when so required” the words “when directed” shall be substituted.
- (iii) after clause (e), the following new sub-section shall be inserted, namely:-
“(2a) Any person whoever brings goods from outside Sikkim for any purpose otherwise than for sale into Sikkim or for sale of which no tax is payable under the Act, shall make declaration of the goods so imported

before the authorities in the Check post in the Form by whatever name it may be called, and in such manner as provided in this section or as prescribed:

Provided that the provisions of this section, section 66, section 67, section 68 and section 69 shall apply invariably for the import of goods into Sikkim referred to in this clause".

Amendment of section 66 32.

In the said Act, in section 66, after the word and figures "section 60" and before the words and the figures "or section 71" the words and figures "or section 65" shall be inserted.

Amendment of section 69 33.

In the said Act, in section 69, in the marginal heading,- after the word and the figures "section 60", the words, figures and punctuation mark "or section 65 or section 71, as the case may be," shall be inserted.

Amendment of section 72 34.

In the said Act, in section 72, in clause (b) of sub-section (1), after the words "to furnish return", and before the words "under section 30", the words "or abstract statement" shall be inserted.

Insertion of new section 72A 35.

In the said Act, after section 72, the following new section shall be inserted, namely,-

"72A. Penalty for purchases made without declaration in waybills or in prescribed Forms or manners-

Where a dealer or any person transported or purchased any goods, whether in the course of inter-state or intra-state trade or business, without making declaration in the prescribed Forms or waybills or invoices and upon inspection or verification those goods are found in the possession or place of business, godown or ware house of such dealer or person or discovered during inspection or verification of his books of accounts, the prescribed authority shall, after providing such dealer or person a reasonable opportunity of being heard, impose upon him a penalty of a sum not exceeding fifty per centum of the value of such goods."

Amendment of section 73 36.

- (i) In the said Act, in sub-section (5) of section 73,- for the words "five years" appearing after the words "within a period of" and before the words "from the date", the words "two years" shall be substituted ;
- (ii) for the second Proviso the following new Proviso shall be substituted, namely:-
"Provided further that the Appellate Authority may, for reasons to be recorded, extend the period of limitation for a further period of six months."

Amendment of section 86 37.

- In the said Act, in section 86,-
- (i) after the words "transporting agent" appearing in the first place, and before the words "to furnish to him" , the words and punctuation mark "or any person or authority awarding works contract, releasing payment, processing bills for payment or principal contractor and sub-contractor," shall be inserted ;

- (ii) after the words "transporting agent" appearing in the second place, and before the words "for examination", the words "or any person or authority awarding works contract, releasing payment, processing bills for payment or principal contractor and sub-contractor," shall be inserted.

By Order.

R.K. PURKAYASTHA (SSJS)
LR-cum-Secretary
Law & Parliamentary Affairs Department.